IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3591 of 2001

with

SPECIAL CIVIL APPLICATION No 6229 to 6233 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VITTHALBHAI M. PATEL

Versus

BHAGVATSINH MANUBHA VAGHELA

Appearance:

1. Special Civil Application No. 3591 of 2001
   MR RR VAKIL for Petitioner No. 1
   MR DP KINARIWALA for Respondent No. 1
   RULE SERVED for Respondent No. 2-7
   MR ND GOHIL, AGP for Respondent No. 8
2. Special Civil Application No. 6229 to 6233 of 2001
   MR RR VAKIL for Petitioner No. 1
   MR DP KINARIWALA for Respondent No. 1
   MR ND GOHIL, AGP for respondent Nos.2 & 3.

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 10/09/2004

ORAL JUDGEMENT

In all these petitions, the petitioner has challenged the common judgment and order passed by the Gujarat Primary Education Tribunal on 9th February 2000 as also the order dated 6th December 2000 by which the review application of the petitioner seeking review of the earlier order dated 9.2.2000 also came to be rejected.

2. The respondent-teachers in each of the petitions had moved application before the Primary Education Tribunal and sought direction with respect to payment of salary as trained teachers from the petitioner School. It was the case of the respondent-teachers that the petitioner is not paying regular salary commensurate with their qualifications and even the salary receipts duly signed by the respondent-teachers do not represent the correct pay given to the concerned teachers. While disposing of these applications, the Primary Education Tribunal in its order dated 9.2.2000 did not accept the contention of the teachers that they have not received the amounts indicated in the receipts of the payments. The Tribunal, however, was pleased to come to the conclusion that the respondents are entitled to receive the pay-scale of trained teachers which has not been paid to them and the Tribunal, therefore, was pleased to direct the School to pay the difference of salary to the teachers from the date of their appointments till May 1996 treating them as trained teachers and further granting them increments as due. It was further directed that from June 1996, till the teachers were terminated by the School on 13.9.97 they would be paid the difference of salary on the premise that they are trained teachers. The petitioner sought review of the said order, however, the Tribunal was pleased to reject the review application by its order dated 6.12.2000. In the present petitions, the petitioner has challenged the said orders of the Tribunal dated 9.2.2000 and 6.12.2000.

3. The learned advocate Shri D.P.Kinariwala appearing for the respective teachers in this group of petitions concedes that the teachers are not entitled to the scale of trained teachers in view of the Division Bench judgment of this Court in J.S.Gosai v. State, reported in 2000 (4) GLR 3265. In the said decision, a Division Bench of this Court had come to the conclusion

that only those teachers who possess the qualification of PTC can be considered as trained teachers and receive the scales provided for the same whereas those teachers who do not possess the said qualification even if possess the qualification of B.Ed., cannot claim the pay-scale meant for trained teachers in the primary schools. The learned advocate for the respective teachers does not dispute that the teachers did not possess PTC qualification. He submits that the teachers had been teaching in primary school and conducting classes between standard I to V. In view of the above factual position and in view of the judgment of the Division Bench of this Court, it is not possible to sustain the orders passed by the Primary Education Tribunal which are under challenge in the present group of petitions. The respective teachers are not entitled to receive salary as trained teachers and their entitlement would only be to receive salary at the scale prescribed for untrained teachers.

4. Learned advocate for the respective teachers however, submits that even considering the scales of untrained teachers, the petitioner has not paid full salary for the period during which the teachers have actually discharged their duties. If that be so, it is expected that the petitioner will pay the difference of outstanding salary and in case of any dispute with respect thereto, it will be open for the teachers to approach the appropriate forum in accordance with law.

4. In the result, the impugned orders dated 9.2.2000 and 6.12.2000 passed by the Primary Education Tribunal are quashed and set aside. Rule is made absolute to the above extent with no order as to costs.

(Akil Kureshi, J.)
(vjn)